

108TH CONGRESS
1ST SESSION

S. 900

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lower Yellowstone
5 Reclamation Projects Conveyance Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DIVERSION WORKS.—The term “Diversion
2 Works” means the land in the N¹/₂NW¹/₄ of Sec. 36,
3 T.18N., R.56E. P. M., Montana, and the diversion
4 dam structure, canal headworks structure, and the
5 first section of the main canal, all contained therein.

6 (2) INTAKE IRRIGATION DISTRICT.—The term
7 “Intake Irrigation District” means the irrigation
8 district by that name that is organized under the
9 laws of the State of Montana and operates the In-
10 take Project.

11 (3) INTAKE PROJECT.—The term “Intake
12 Project” means the Federal irrigation feature oper-
13 ated by the Intake Irrigation District and authorized
14 under the Act of August 11, 1939 (chapter 717; 53
15 Stat. 1418).

16 (4) IRRIGATION DISTRICTS.—The term “irriga-
17 tion districts” means—

18 (A) the Intake Irrigation District;

19 (B) the Lower Yellowstone Irrigation Dis-
20 trict No. 1;

21 (C) the Lower Yellowstone Irrigation Dis-
22 trict No. 2; and

23 (D) the Savage Irrigation District.

24 (5) LOWER YELLOWSTONE IRRIGATION DIS-
25 TRICT NO. 1.—The term “Lower Yellowstone Irriga-

tion District No. 1” means the irrigation district by that name that is organized under the laws of the State of Montana and operates the part of the Lower Yellowstone Irrigation Project located in the State of Montana.

(6) LOWER YELLOWSTONE IRRIGATION DISTRICT NO. 2.—The term “Lower Yellowstone Irrigation District No. 2” means the irrigation district by that name that is organized under the laws of the State of North Dakota and operates the part of the Lower Yellowstone Irrigation Project located in the State of North Dakota.

(7) LOWER YELLOWSTONE IRRIGATION PROJECT.—The term “Lower Yellowstone Irrigation Project” means the Federal irrigation feature operated by Lower Yellowstone Irrigation District No. 1 and Lower Yellowstone Irrigation District No. 2 and authorized by the Act of June 17, 1902 (chapter 1093; 32 Stat. 388).

(8) MEMORANDUM OF UNDERSTANDING.—The term “Memorandum of Understanding” means the memorandum of understanding dated November 16, 1999, and any subsequent replacements or amendments between the Districts and the Montana Area Office, Great Plains Region, Bureau of Reclamation,

for the purpose of defining certain principles by which the title to the projects will be transferred from the United States to the districts.

(9) PICK-SLOAN MISSOURI BASIN PROGRAM.—The term “Pick-Sloan Missouri Basin Program” means the comprehensive Federal program for multipurpose benefits within the Missouri River Basin, including irrigation authorized by section 9 of the Act of December 22, 1944, commonly known as the “Flood Control Act of 1944” (chapter 665; 58 Stat. 891).

(10) PICK-SLOAN MISSOURI BASIN PROGRAM PROJECT USE POWER.—The term “Pick-Sloan Missouri Basin Program Project Use Power” means power available for establishing and maintaining the irrigation developments of the Pick-Sloan Missouri Basin Program.

(11) PROJECTS.—The term “Projects” means—

(A) the Lower Yellowstone Irrigation Project;

(B) the Intake Irrigation Project; and

(C) the Savage Unit.

(12) SAVAGE IRRIGATION DISTRICT.—The term “Savage Irrigation District” means the irrigation

1 district by that name that is organized under the
2 laws of the State of Montana and operates the Sav-
3 age Unit.

4 (13) SAVAGE UNIT.—The term “Savage Unit”
5 means the Savage Unit of the Pick-Sloan Missouri
6 Basin Program, a Federal irrigation development
7 authorized by the Act of December 22, 1944 (com-
8 monly known as the “Flood Control Act of 1944”)
9 (chapter 665; 58 Stat. 891).

10 (14) SECRETARY.—The term “Secretary”
11 means the Secretary of the Interior.

12 **SEC. 3. CONVEYANCE OF PROJECTS.**

13 (a) CONVEYANCES.—

14 (1) GENERAL.—As soon as practicable after the
15 date of enactment of this Act, the Secretary shall
16 convey works, facilities, and lands of the Projects to
17 the Irrigation Districts in accordance with all appli-
18 cable laws and pursuant to the terms of the Memo-
19 randum of Understanding. The conveyance shall
20 take place in two stages, the first stage to include
21 all conveyances under this Act except Diversion
22 Works and the second stage to convey the Diversion
23 Works.

24 (2) LANDS.—

1 (A) GENERAL.—All lands, easements, and
2 rights-of-way the United States possesses that
3 are to be conveyed by the Secretary to the re-
4 spective irrigation districts shall be conveyed by
5 quitclaim deed. Conveyance of such lands, ease-
6 ments, and rights-of-way is subject to permits,
7 licenses, leases, rights-of-use, or right-of-way of
8 record outstanding in third parties on, over, or
9 across such lands, easements, and rights-of-
10 way.

11 (B) MINERAL RIGHTS.—Conveyance of all
12 lands herein described shall be subject to a res-
13 ervation by the United States reserving all min-
14 erals of a nature whatsoever, excluding sand
15 and gravel, and subject to oil, gas, and other
16 mineral rights heretofore reserved of record by
17 or in favor of third parties.

18 (3) WATER RIGHTS.—The Secretary shall
19 transfer to the respective Irrigation Districts in ac-
20 cordance with and subject to the law of the State of
21 Montana, all natural flow, wastewater, seepage, re-
22 turn flow, domestic water, stock water, and ground-
23 water rights held in part or wholly in the name of
24 the United States that are used to serve the lands
25 within the Irrigation Districts.

1 (4) COSTS.—

2 (A) RECLAMATION WITHDRAWN LANDS.—

3 The Irrigation Districts shall purchase Rec-
 4 lamation withdrawn lands as identified in the
 5 Memorandum of Understanding for their value
 6 in providing operation and maintenance benefits
 7 to the Irrigation Districts.

8 (B) SAVAGE UNIT REPAYMENT OBLIGA-
 9 TIONS.—

10 (i) SAVAGE IRRIGATION DISTRICT.—

11 As a condition of transfer, the Secretary
 12 shall receive an amount from the Savage
 13 Irrigation District equal to the present
 14 value of the remaining water supply repay-
 15 ment obligation of \$60,480 that shall be
 16 treated as full payment under Contract
 17 Number I1r-1525, as amended and as ex-
 18 tended by Contract No. 9-07-60-WO770.

19 (ii) PICK-SLOAN MISSOURI BASIN PRO-

20 GRAM CONSTRUCTION OBLIGATION.—As a

21 condition of transfer, the Secretary shall
 22 accept \$94,727 as payment from the Pick-
 23 Sloan Missouri Basin Program (Eastern
 24 Division) power customers under the terms
 25 specified in this section, as consideration

1 for the conveyance under this subsection.

2 This payment shall be out of the receipts
 3 from the sale of power from the Pick-Sloan
 4 Missouri Basin Program (Eastern Divi-
 5 sion) collected by the Western Area Power
 6 Administration and deposited into the Rec-
 7 lamation fund of the Treasury in fiscal
 8 year 2003. This payment shall be treated
 9 as full and complete payment by the power
 10 customers of the construction aid-to-irriga-
 11 tion associated with the facilities of the
 12 Savage Unit.

13 (b) REVOCATION OF RECLAMATION WITHDRAWALS

14 AND ORDERS.—

15 (1) The Reclamation withdrawal established by
 16 Public Land Order 4711 dated October 6, 1969, for
 17 the Lower Yellowstone Irrigation Project in lots 1
 18 and 2, section 3, T.23N., R. 59 E., is hereby re-
 19 voked in its entirety.

20 (2) The Secretarial Order of March 22, 1906,
 21 which was issued for irrigation works on lots 3 and
 22 4 section 2, T. 23N., R. 59E., and Secretarial Order
 23 of August 8, 1905, which was issued for irrigation
 24 works in section 2, T. 17 N., R. 56 E. and section

1 6, T. 17 N., R. 57 E., are hereby revoked in their
2 entirety.

3 (3) The Secretarial Order of August 24, 1903,
4 and July 27, 1908, which were issued in connection
5 with the Lower Yellowstone Irrigation Project, are
6 revoked insofar as they affect the following lands:

7 (A) Lot 9 of Sec. 2 and lot 2 of Sec. 30,
8 T.18N., R.57E.; lot 3 of Sec. 4, T.19N.,
9 R.58E.; lots 2 and 3 and 6 and 7 of Sec. 12,
10 T.21N, R.58E.; SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 26,
11 T.22N., R58E; lots 1 and 4 and 7 and
12 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 20, T.22N., R.59E.;
13 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 13, T.23N., R.59E.; and lot
14 2 of Sec. 18, T.24N., R.60E.; all in the Prin-
15 cipal Meridian, Montana.

16 (B) Lot 8 of Sec. 2 and lot 1 and lot 2
17 and lot 3 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 10 and lot 2
18 of Sec. 11 and lot 6 of Sec. 18 and lot 3 of Sec.
19 35, T.151N., R.104W.; and lot 7 of Sec. 28,
20 T.152N., R.104W.; all in the Fifth Principal
21 Meridian, North Dakota.

22 **SEC. 4. REPORT.**

23 If the conveyance under this Act has not occurred
24 within 2 years after the date of the enactment of this Act
25 for the first stage conveyances as provided in section 3,

1 and 5 years after the date of the enactment of this Act
2 for the second stage conveyances as provided in section
3 3, the Secretary shall provide a report to the Committee
4 on Resources of the House of Representatives and the
5 Committee on Energy and Resources of the Senate on the
6 status of the transfer and anticipated completion date.

7 **SEC. 5. RECREATION MANAGEMENT.**

8 As a condition of the Conveyance of lands under sec-
9 tion 3, the Secretary shall require that Lower Yellowstone
10 Irrigation District No. 1 and Lower Yellowstone Irrigation
11 District No. 2 convey a perpetual conservation easement
12 to the State of Montana, at no cost to the State, for the
13 purposes of protecting, preserving, and enhancing the con-
14 servation values and permitting recreation on Federal
15 lands in part to be conveyed under this Act. Lower Yellow-
16 stone Irrigation District No 1, Lower Yellowstone Irriga-
17 tion District No. 2, and the State of Montana have mutu-
18 ally agreed upon such conservation easement.

19 **SEC. 6. PROJECT PUMPING POWER.**

20 The Secretary shall sustain the irrigation develop-
21 ments established by the Lower Yellowstone and Intake
22 Projects and the Savage Unit as components of the irriga-
23 tion plan under the Pick-Sloan Missouri River Basin Pro-
24 gram and shall continue to provide the Irrigation Districts
25 with Pick-Sloan Missouri River Basin Project Use power

1 at the Irrigation Districts' pumping plants, except that the
2 rate shall be at the preference power rate and there shall
3 be no ability-to-pay adjustment.

4 **SEC. 7. YELLOWSTONE RIVER FISHERIES PROTECTION.**

5 (a) GENERAL.—The Secretary, prior to the transfer
6 of title of the Diversion Works and in cooperation with
7 the Irrigation Districts, shall provide fish protection de-
8 vices to prevent juvenile and adult fish from entering the
9 Main Canal of the Lower Yellowstone Irrigation Project
10 and allow bottom dwelling fish species to migrate above
11 the Project's Intake Diversion Dam.

12 (b) PARTICIPATION.—The Secretary and the Irriga-
13 tion District shall work cooperatively in planning, engi-
14 neering, and constructing the fish protection devices.

15 (c) CONSTRUCTION SCHEDULE.—Construction of
16 Fish Protection Devices shall be completed within 2 years
17 after the date of enactment of this Act.

18 (d) MONITORING.—The Secretary, acting through
19 the Commissioner of the Bureau of Reclamation and the
20 Director of the United States Fish and Wildlife Service,
21 prior to the transfer of title of the Diversion Works, shall
22 establish and conduct a monitoring plan to measure the
23 effectiveness of the devices for a period of 2 years after
24 construction is completed.

1 (e) MODIFICATIONS.—The Commissioner of the Bu-
 2 reau of Reclamation, prior to the transfer of title of the
 3 Diversion Works, shall be responsible to modify the de-
 4 vices as necessary to ensure proper functioning. All modi-
 5 fications shall be completed within 3 years after the de-
 6 vices were initially constructed.

7 (f) COSTS.—Costs incurred in planning, engineering,
 8 constructing, monitoring, and modifying all fish protection
 9 devices shall be deemed nonreimbursable.

10 (g) OPERATION, MAINTENANCE, AND REPLACE-
 11 MENTS RESPONSIBILITY.—Following completion of moni-
 12 toring and modifications required under this section, the
 13 Irrigation Districts shall operate, maintain, and replace
 14 the fisheries protection devices in a manner to ensure
 15 proper functioning.

16 (h) AUTHORIZATION OF APPROPRIATIONS.—There
 17 are authorized to be appropriated such sums as may be
 18 necessary to implement this section.

19 **SEC. 8. RELATIONSHIP WITH OTHER LAWS AND FUTURE**
 20 **BENEFITS.**

21 Upon conveyance of the projects under this Act, the
 22 Irrigation Districts shall not be subject to the Reclamation
 23 laws or entitled to receive any Reclamation benefits under
 24 those laws except as provided in section 6.

1 **SEC. 9. LIABILITY.**

2 Effective on the date of conveyance of a project under
3 this Act, the United States shall not be liable under any
4 State or Federal law for damages of any kind arising out
5 of any act, omission, or occurrence relating to the projects,
6 except for damages caused by acts of negligence com-
7 mitted by the United States or by its employees, agents,
8 or contractors prior to the date of this conveyance. Noth-
9 ing in this section shall be considered to increase the liabil-
10 ity of the United States beyond that currently provided
11 in chapter 171 of title 28, United States Code, popularly
12 known as the Federal Tort Act.

13 **SEC. 10. COMPLIANCE WITH LAWS.**

14 As a condition of the Conveyances under section 3,
15 the Secretary shall by no later than the date on which
16 the conveyances occur complete appropriate analyses of
17 the transfer in compliance with the requirements of the
18 National Environmental Policy Act of 1969 (42 U.S.C.
19 4321 et seq.), the Endangered Species Act of 1973 (16
20 U.S.C. 1531 et seq.), and other applicable laws.

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